IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7199 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AKHIL GUJARAT VIDYUT KAMDAR SANGH

Versus

STATE OF GUJARAT

Appearance:

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioner

MS DARSHNA PANDIT, AGP for M/S PATEL ADVOCATES for Respondent No. 1

RULE SERVED for Respondent No. 2, 4

MR VIMAL M PATEL for MR KS NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner-union challenges the order of the respondent No.2 Deputy Labour Commissioner made on

12-7-1990, refusing to make a reference under Section 10 of the Industrial Disputes Act, 1947.

2. The petitioner had raised the demand in respect of 25 Supervisors, who were Diploma holders working at Wanakbori Thermal Power Station that after their completion of four years of service as Supervisors their services were required to be treated as Junior Engineers with continuity of service. The dispute was raised by giving a strike notice under Section 22 of the Act on 8-1-1990. The conciliation proceedings failed and the failure report was submitted by the Conciliation Officer under Section 12(4) of the Act on 30-3-1990. After considering the failure report the respondent No.2 passed the impugned order dated 12-7-1990 at Annexure "E" to the petition, holding that for the reason mentioned therein it was not found to be just and proper to make a reference. The reason which was given is that as the demand fell within the administrative domain of the establishment, the establishment could not be compelled to do anything in that regard and, therefore, it was not just and proper to make a reference.

3. The only reason for refusing the reference given in the impugned order is that the subject matter of the demand falls within the administrative domain of the establishment. Whenever any dispute is raised by the employees' union, necessarily the subject matter would fall within the administrative functions of the employer concerned. If the reason that has been assigned in the impugned order is to be accepted, then no case of reference can ever be made out, because, disputes raised by the employees would necessarily be within the domain of administrative functions of the employer. There is no doubt that the appropriate Government is not bound to make a reference in every case but nature of its administrative power under Section 10 of the Act conferred on the appropriate Government clearly indicates that the Government has to first form an opinion whether any industrial dispute exits or is apprehended. In the impugned order it is not stated that the dispute did not exist or was not apprehended.

4. As held by the Hon'ble Supreme Court in Bombay Union of Journalists and Others Vs. The State of Bombay and another, reported in AIR 1964 SC 1617 followed in a decision of this Court in N.D.D.B. Employees' Union Vs. State of Gujarat and others reported in 35(1) GLR 891, if the claim made is patently frivolous or is clearly belated, the appropriate Government may refuse to make a reference. In the impugned order no such reason has been

put forth, nor is it stated that such a reference is impermissible under any provision of law. The basis on which the impugned order has been made, namely, the subject matter of dispute falls within the adminstrative domain of the employer, cannot be a ground for refusing a reference, unless there is a statutory provision which prevents such a reference being made.

5. The impugned order cannot, therefore, be sustained and the same is hereby set aside with a direction that the appropriate Government may reconsider the matter and take a decision in accordance with law. Rule is made absolute accordingly, with no order as to costs.

11-8-2000 (R.K. Abichandani, J.)

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